

in the record may not be reproduced in the brief, but may be reproduced, within reasonable limits, in an appendix to the brief. Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, the brief must be accompanied by a table of contents and of points made, including page references, and an alphabetical list of citations, with page references.

(d) *Record.* All initial and reply briefs will accompany the record and be available to the Commission and the presiding officer for consideration in deciding the case.

§ 385.707 Oral argument before initial decision (Rule 707).

(a) *Procedure.* The presiding officer will designate the order of any oral argument to be held, set a time limit on each argument, and make any other procedural rulings.

(b) *Scope.* (1) If oral argument is held without an initial brief, each participant must be given the opportunity to present orally the information required or permitted to be included in initial briefs under Rule 706(b).

(2) If oral argument is held in addition to an initial or reply brief, oral argument may be limited to issues considered by the presiding officer to be appropriate issues for oral argument.

(c) *Inclusion of transcript of oral argument.* All oral arguments will be transcribed and included in the record and will be available to the Commission and the presiding officer in deciding the case.

§ 385.708 Initial decisions by presiding officer (Rule 708).

(a) *Applicability.* This section applies to any proceeding in which a presiding officer, other than the Commission, presided over the reception of the evidence.

(b) *General rule.* (1) Except as otherwise ordered by the Commission or provided in paragraph (b)(2) of this section, the presiding officer will prepare a written initial decision.

(2)(i) If time and circumstances require, the presiding officer may issue an order stating that an oral initial decision will be issued.

(ii) An oral decision is considered served upon all participants when the decision is issued orally on the record. Promptly after service of the oral decision, the presiding officer will prepare the oral initial decision contained in the transcript in the format of a written initial decision.

(3) Any initial decision prepared under paragraph (b)(1) or (b)(2) of this section will be certified to the Commission by the presiding officer with a copy of the record in the proceeding.

(4) Not later than 35 days after the certification of an initial decision, under paragraph (b)(3) of this section, the presiding officer, after notifying the participants and receiving no objection from them, may make technical corrections to the initial decision.

(c) *Initial decision prepared and certified by presiding officer.* (1) The presiding officer who presides over the reception of evidence will prepare and certify the initial decision, if any, unless the officer is unavailable or the Commission provides otherwise in accordance with 5 U.S.C. 557(b).

(2) If the presiding officer who presided over the reception of evidence becomes unavailable, the Chief Administrative Law Judge may issue an order designating another qualified presiding officer to prepare and certify the initial decision.

(d) *Finality of initial decision.* For purposes of requests for rehearing under Rule 713, an initial decision becomes a final Commission decision 10 days after exceptions are due under Rule 711 unless:

(1) Exceptions are timely filed under Rule 711; or

(2) The Commission issues an order staying the effectiveness of the decision pending review under Rule 712.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21315, May 21, 1984; Order 575, 60 FR 4860, Jan. 25, 1995]

§ 385.709 Other types of decisions (Rule 709).

In lieu of an initial decision under Rule 708, the Commission may order any type of decision as provided by 5 U.S.C. 557(b), or permit waiver of the initial decision as provided by Rule 710.